

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

June 10, 2005

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2005-65-M
Petitioner	:	A.C. No. 38-00052-00000
	:	
v.	:	
	:	
KENTUCKY TENNESSEE CLAY,	:	Kentucky Tennessee Clay
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Feldman

This civil penalty matter concerns a discrimination complaint filed pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3) (1994) (the “Act”), by Stanley Quackenbush against Kentucky Tennessee Clay (KTC). Following an evidentiary hearing, it was determined that KTC violated section 105(c) of the Act by disciplining Quackenbush immediately after Quackenbush communicated safety related complaints when he accompanied a Mine Safety and Health Administration (MSHA) Inspector during an inspection of train track conditions. *Decision*, 26 FMSHRC 913 (Dec. 2004).

In accordance with the provisions of Commission Rule 44(b), 29 C.F.R. § 2700.44(b), the Secretary was provided with a copy of the *Decision* so that she could initiate a civil penalty proceeding for the subject 105(c) violation. On January 24, 2005, the Secretary filed a petition for assessment of civil penalty under section 105(d) of the Act that has been assigned as Docket No. SE 2005-65-M. The Secretary’s petition initially sought to impose a \$3,000 civil penalty.

On May 27, 2005, the Secretary filed a motion to approve a settlement agreement and to dismiss this case. A reduction in civil penalty from \$3,000 to \$2,000 is proposed. The settlement terms include KTC’s acknowledgment that its employees have a statutory right to contact MSHA to report hazardous conditions without fear of retribution.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i)

of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that Kentucky Tennessee Clay pay a civil penalty of \$2,000 within 30 days of this Decision, and, upon receipt of timely payment, the civil penalty matter in Docket No. SE 2005-65-M **IS DISMISSED**.

Jerold Feldman
Administrative Law Judge

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